IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 876 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GAUTAM B RUPAREL

Versus

CHIEF ENGINEER TR

Appearance:

1. Special Civil Application No. 876 of 1992

Mrs. Sangeeta Pahwa, Advocate, for

MR PM THAKKAR, Senior Advocate, for Petitioner

MR MD PANDYA for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI

Date of decision: 23/07/2004

ORAL JUDGEMENT

1. The petitioner challenges the order terminating his services made on 7th August 1991, a copy of which is at Annexure "B" to the petition.

2. The petitioner was appointed as an apprentice Junior Engineer on 2.5.1989 by the Gujarat Electricity Board and, thereafter, as a Junior Engineer on probation for a period of six months by order dated 27.4.1990. It appears that he resumed his duties as junior engineer on probation on 3.5.1990. It also appears that he was sent on deputation as Junior Engineer by order dated 18.8.1990 to the Sardar Sarovar Narmada Nigam Limited. According to the petitioner, by order dated 15.7.1991, after a lapse of one year and three months from the date of his appointment, his probation was extended for a further period of six months with effect from 3.5.1991 as per the order at Annexure "A" to the petition. According to the petitioner, while he was discharging his duties on deputation, his wife had passed away, but, after about three months from that unfortunate event, the petitioner was dragged by his in-laws to the court of law and, therefore, he was constrained to remain absent for a period of about 40 days without prior intimation. However, that period was considered by the respondents as leave without pay and the petitioner had given his explanation for such absence. It is the petitioner's case that there was no justification to extend the period of probation and that order of termination was issued with a prejudicial mind.

3. The respondent-Electricity Board has, in the affidavit-in-reply filed on its behalf, pointed out that the petitioner reported for his duties pursuant to the appointment order on 3.5.1990 and that, during the probationary period of six months, his work was assessed by the Executive Engineer (T.R.), Bodeli, who was of the view that his work and attitude were not satisfactory. The Executive Engineer (T.R.), Bodeli, proposed to extend the probation of the petitioner for further one year. Based on that proposal, the Competent Authority extended the probationary period for further six months with effect from 3.11.1990 under order dated 26.10.1990 annexed as Appendix "A" to the affidavit-in-reply. It is stated that, in view of this order, the stand taken up by the petitioner in paragraph 10 of the petition that he was shocked and surprised to received the extension order after one year and three months was wrong and that the petitioner had suppressed the fact that his probationary period was extended from 3.11.1990. It is also stated in paragraph 9 of the affidavit-in-reply that the Sardar Sarovar Narmada Nigam Limited did not find the services

of the petitioner satisfactory and, in pursuance of their proposal, the probationary services of the petitioner were further extended by the Electricity Board under order dated 15.7.1991 with effect from 3.5.1991. According to the respondent-Board, the petitioner did not show any improvement in the work during the first probationary period as also after extension of the probationary period and, therefore, his services came to be terminated under Regulation 58. It is further stated that the Board was not required to assign any reasons for termination of his services, since his services were not terminated as a consequence of any disciplinary proceedings. It is also contended that, as per Regulations 40, 57 and 59 of the Service Regulations, unless the Competent Authority confirms a probationer, no inference could be drawn that he was deemed to have been confirmed.

4. The learned counsel for the petitioner contended that extension of probationary period was not warranted in view of the fact that after the maximum period for which the petitioner could have been kept on probation he is deemed to have been confirmed. The order of extension of probation was, therefore, illegal and arbitrary. Moreover, the petitioner was never informed about any deficiency during the tenure of his service and, therefore, there was no justification to terminate his service without giving any opportunity to show improvement, even if he was to be treated on extended probation. It was submitted that the termination order was made soon after extending the probationary period and without allowing the petitioner to complete the extended period of probation, during which, he would have had an opportunity to show improvement, and, even for this reason, the impugned order of termination was arbitrary and illegal. The learned counsel, further, argued that, since the petitioner was on deputation to the Sardar Sarovar Narmada Nigam Limited, there was no occasion for the respondent-Board to find the services of the petitioner as unsatisfactory.

4.1 The learned counsel for the petitioner placed heavy reliance on the decision of the Supreme Court in the case of Wasim Beg vs. State of U.P. and others, reported in (1998) 3, Supreme Court Cases 321, in support of her contention. She pointed out from paragraph 15 of the judgment the proposition that whether an employee at the end of the probationary period automatically gets confirmation in the post or whether an order of confirmation or any specific act on the part of the employer confirming the employee is necessary, will

depend upon the provisions in the relevant Service Rules relating to probation and confirmation. She submitted that, under Regulation 57, the period of probation would have been initially for six months which could be extended for further period of six months and, therefore, after such extended period, the employee would be deemed to have been confirmed.

5. The learned counsel for the respondent-Board contended that, as per the Regulations, there was no automatic confirmation and the Competent Authority was required to take a decision for giving a temporary or permanent appointment in a substantive post. According to him, the first order extending period of probation was suppressed and, even after that extended period, there was no deemed confirmation. He submitted that the termination order has been issued during the extended period of probation and it was not necessary for allowing the petitioner to work till the last date of his extended period of probation when the Authority was of the view that his services should be terminated for unsatisfactory work during the probationary period and for not showing any improvement despite extensions.

5.1 The learned counsel for the respondent-Board pointed out from the decision of the Supreme Court in the case of High Court of M.P. vs. Satya Narayan Jhavar, reported in (2001) 7 Supreme Court Cases 161, that the Supreme Court, in paragraph 37 of the judgment, had categorically stated that, "ordinarily a deemed confirmation of a probationer arises when the letter of appointment so stipulates or the Rules governing service conditions so indicate. In the absence of such term in the letter of appointment or in the relevant Rules, it can be inferred on the basis of the relevant Rules by implication. But it cannot be said that merely because a maximum period of probation has been provided in the Service Rules, continuance of the probationer thereafter ipso facto must be held to be a deemed confirmation."

6. As held by the Supreme Court as far back as in the year 1962 in the case of S.Sukhbans Singh vs. The State of Punjab, reported in AIR 1962 Supreme Court 1711, a probationer cannot, after the expiry of probationary period, automatically acquire the status of a permanent member of a service, unless of course the rules under which he is appointed expressly provide for such a result. Service Regulations were made by the Gujarat Electricity Board in exercise of powers conferred by Section 78(c) of the Electricity (Supply) Act, 1948, known as 'the Gujarat Electricity Board Service

Regulations'. Regulation 40 defines a probationer as an employee appointed on probation i.e. on trial initially for a period of six months which can be extended to a further period of six months by the Competent Authority before he is appointed to or continued in a permanent or a temporary post. Under Regulation 57, it is provided that all appointments shall be on probation, that is, on trial initially for a period of six months which can be extended by a further period of six months by the Competent Authority before an employee is appointed to or continued in a permanent or a temporary post. By Regulation 58, it is laid down that the service of a probationer may be terminated by the Competent Authority during the period of probation without notice. Regulation 59 provides that the probationer, if continued in service after the expiry of the probationary period, may be appointed substantively or to officiate in a temporary or permanent posts as the Competent Authority may decide.

7. On a bare reading of the aforesaid Regulations 40, 57, 58 and 59, it is abundantly clear that even in cases where the probationer continues in service after expiry of the probationary period, a decision is required to be taken by the Competent Authority on the question of his appointment on substantive or officiating basis in a temporary or permanent post. Regulation 59 clearly indicates that there was no automatic confirmation of a probationer even in cases where the probationer may be continuing in service after expiry of probation. In the present case, the initial period of probation was extended for six months by order dated 26.10.1990 which is produced at Appendix "A" to the affidavit-in-reply which was suppressed in the petition. The work of the petitioner during the period of probation was found to be unsatisfactory as stated in the affidavit-in-reply. Even while on deputation to the Sardar Sarovar Narmada Nigam Limited, his work was unsatisfactory, which fact is evident from the impugned order of termination, in which, it was stated that the Sardar Sarovar Narmada Nigam Limited had reported that his work was not found satisfactory.

8. The petitioner never challenged the order of extension of his probation which was made on 15.7.1991 further extending his probation from 3.5.1991. Even the earlier order of extension of service made on 26.1.1990 was not questioned on the ground that his work was satisfactory during the initial period of probation. The order of termination is clearly made during the extended period of probation. Since the petitioner cannot be said

to be confirmed in service at any point of time after the initial and the extended period of probation, the order dated 15.7.1991 clearly had the effect of further extending his period of probation from 3.5.1991. When the respondents-Authorities were satisfied that there was no improvement shown by the petitioner, they were within their power in making an order of termination during the extended period of probation as contemplated by Regulation 58.

9. The reliance placed on behalf of the petitioner on the decision of the Supreme Court in the case of Wasim Beg (supra) is wholly misconceived, because, in that case, it was noted from the record that there was a report showing that the probationary period was satisfactorily completed by the employee and he was already considered as a regular employee, as noted in paragraph 18 of the judgment. This observation has also been considered in Satya Narayan Jhavar (supra) while referring to Wasim Beg (supra) in paragraph 20 of the judgment and it has been further held that in Wasim Beg (supra) no maximum period of probation was prescribed either by the letter of appointment or the Rules, and that the Rules laid down that the employee shall be deemed to have become a confirmed employee after he had successfully completed the period of probation. The facts in the present case do not warrant an inference of deemed confirmation and, since the Authority had decided to further extend the period of probation by order dated 15.7.1991, there did not arise any question of the petitioner being treated as a confirmed employee. The record clearly shows that, during the relevant period of probation, his work was assessed as unsatisfactory warranting termination of his services, which order has been issued during the extended period of probation.

10. There is, therefore, no substance in the challenge made against the impugned order of termination, which does not cast any stigma on the petitioner. The petition is, therefore, rejected. Rule is discharged with no order as to costs.

(R.K. Abichandani, J.)
(swamy)